IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Notice of Motion NO.3899 of 2005

In

Suit No. 4437 of 2000

The Zoroastrian Radih Society... Plaintiff

V/s

Mrs.Pervin Nariman Jogina and Ors..Defendants

Shri R.H.Mirza for plaintiff

Mr.S.S.Shetty i/b M.P.Vashi for defendants

CORAM:D.K.DESHMUKH,J.

DATED:28th June 2007

P.C.:-

1. This Notice of Motion is taken out by the plaintiff. The learned Advocate appearing for the plaintiff states that this Notice of Motion was taken out in December 2005 and that the same was served upon defendant.

2. The learned Advocate appearing for the defendant states that defendants received copy of Notice of Motion for the first time on 26-6-2007. The Advocate appearing for the plaintiff is not in a position to

produce any acknowledgment showing that the defendants have received the Notice of Motion in the year 2005, as is alleged by him. In the absence of any acknowledgment and in the face of clear statement made by the defendant that they did not receive copy of the Notice of Motion prior to 26-6-2007, the Court has to proceed on the basis that the plaintiff has not served the copy of Notice of Motion taken out by the plaintiff in December 2005 till 26-6-2007 on the defendants. The plaintiff is therefore guilty of not prosecuting the matter diligently. Conduct of the plaintiff shows that the plaintiff is not interested in prosecuting the matter. Notice of Motion is therefore liable to be rejected.

2. The plaintiff is directed to pay cost of Rs.5,000/- to the defendant.

(D.K.DESHMUKH,J.)